

AFTER RECORDING RETURN THIS ORIGINAL DOCUMENT TO:

*MONTANA LAND RELIANCE
P.O. BOX 355
HELENA, MT 59624*

DRAFT

September 28, 2018

BOYLE CE

DEED OF CONSERVATION EASEMENT

THIS GRANT DEED OF CONSERVATION EASEMENT ("Easement") is made this _____ day of _____, 20____, by **RICHARD A. BOYLE AND JANET R. BOYLE**, as joint tenants, of 263 Shaw Butte Lane, P.O. Box 303, Simms, Montana 59477 (hereinafter together with their heirs, personal representatives, successors, and assigns collectively referred to as "Grantor") and **THE MONTANA LAND RELIANCE**, a nonprofit Montana corporation with a principal office at 324 Fuller Avenue, Helena, Montana 59601 (hereinafter referred to as "Grantee");

R E C I T A L S:

1. Grantor is the owner of certain real property in Cascade County, Montana, more particularly described in Exhibit A attached hereto and incorporated by this reference (hereinafter the "Property"), and the Property totals approximately 120 acres; and,

2. The Property consists of significant scenic and open-space land as defined in the Open Space Land and Voluntary Conservation Easement Act, Montana Code Annotated (MCA) Section 76-6-101, et seq.; and,

3. The Property constitutes a valuable component of the scenic and open-space lands in the Sun River Valley and the Property remains largely undeveloped and retains its agricultural and open-space characteristics; and,

4. Preservation of the Property by this Easement will yield significant public benefits to the people of the State of Montana, Cascade County, and the United States by protecting, preserving, and providing the following significant resources, in perpetuity, in compliance with Section 170(h)(4)(A)(iii) of the Internal Revenue Code and Sections 76-6-101, et seq., MCA:

a. Open-space lands which maintain the rural, agricultural, and scenic qualities of the area and provide opportunities to continue traditional farming and ranching practices in perpetuity, as encouraged and supported by federal land conservation and tax policies, the private land protection policies of the federal government, and of the State of Montana, and local land conservation policies adopted in Cascade County, Montana, as set forth in more detail below; and,

b. The Property can be easily seen from Highway 200, the major route through the Sun River Valley from Great Falls, Montana, through the northern Rocky Mountains, and the protection of this landscape will provide public benefits by ensuring the open space will remain relatively

undisturbed by prohibiting residential subdivision on the Property in perpetuity, and in particular in conjunction with the expansion of the community of Simms, Montana, which is located less than one mile away; and

c. Preservation of the Property's open-space character will also benefit wildlife, such as deer, upland birds which use the Property, along with western interior birds such as songbirds, owls, and hawks;

(hereinafter collectively referred to as the "Conservation Values"); and,

5. The Cascade County, Montana, Commissioners have expressly recognized in the Cascade County Growth Policy Update, adopted in May, 2014, the importance of preserving open space and agricultural lands in Cascade County, Montana, as a result of rapid urban and suburban development of formerly rural lands; and,

6. Grantor's Property is located in the vicinity of other conservation easements held by Grantor and therefore, the protection of Grantor's property in this Easement provides significant public benefit consistent with Treasury Regulation Section 1.170A-14(d)(4)(iv)(A)(4); and,

7. Grantor, as the owner of the Property, owns the rights to identify, preserve, and protect in perpetuity the open-space character, scenic values, and significant relatively natural features and other Conservation Values of the Property; and,

8. By conveying this Easement and its associated rights to Grantee, freely, voluntarily, and irrevocably, Grantor intends to preserve and protect in perpetuity the Conservation Values of the Property; and,

9. The State of Montana has recognized the importance of private efforts toward voluntary conservation of private lands in the state by the enactment of MCA Sections 76-6-101, et seq., and 76-6-201, et seq.; and,

10. Grantee is a qualified organization under MCA Sections 76-6-104(5) and 76-6-204, organized to conserve land for open space purposes, and is an organization described in Section 170(h)(3) of the Internal Revenue Code of 1986 (hereinafter the "Code") qualified to receive and hold conservation easements.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Easement, and as an absolute, unconditional, unrestricted, and voluntary gift, Grantor hereby gives, grants, and conveys to Grantee, and the successors and assigns of Grantee, with warranties of title, this perpetual Easement on, over, and across the Property in accordance with the terms and conditions set forth below. Grantee acknowledges that no goods or services were received in consideration of the grant of this Easement, which Grantee received as of the date noted on page 1 of this Easement.

SECTION I

Purposes and General Effect of Easement

A. Purposes. The purposes of this Easement are to assure that the Conservation Values will be maintained in perpetuity and to prevent any use of, or activity on, the Property that will significantly impair those Values. In achieving these purposes, it is the mutual intention of Grantor and Grantee to permit the continuation of such uses of the Property as may be conducted consistent with the purposes and terms of this Easement. If one or more of the purposes of this Easement may no longer be accomplished, such failure of purpose shall not be deemed sufficient cause to terminate

the entire Easement as long as any other purposes of the Easement may be accomplished. Grantor and Grantee recognize that changes in economic conditions, in technologies, in accepted farm, ranch, and forest management practices, and in the situation of Grantor may result in an evolution of land uses and practices related to the Property which are allowed, provided that such uses and practices are consistent with the purposes and terms of this Easement.

B. Perpetual restrictions. This Easement shall run with and burden title to the Property in perpetuity and shall bind Grantor and all future owners and tenants.

C. Dedication. The Property is hereby declared to be open space pursuant to MCA Section 76-6-107, and may not, except as specifically provided herein and pursuant to statute, be converted or diverted from open space.

SECTION II

Rights Conveyed

The rights conveyed by this Easement to Grantee are the following:

A. Identification and protection. To identify, preserve, and protect in perpetuity the Conservation Values of the Property, including, but not limited to, its significant open-space and scenic values, subject, however, to Grantor's reserved rights as herein provided and further subject to all third party rights of record in the Property existing at the time of conveyance of this Easement and not subordinated to this Easement.

B. Access. To enter upon the Property to inspect the same and to monitor Grantor's compliance with the terms of this Easement, all in a manner that will not unreasonably interfere with the use of the Property by Grantor. Grantee shall also have the right to enter the Property to enforce the rights granted to Grantee in this Easement, and Grantor therefore conveys to Grantee a right of immediate entry onto the Property if, in Grantee's sole judgment, reasonably exercised, such entry is necessary to prevent damage to or destruction of the Conservation Values protected by this Easement. Aside from the rights of access granted to Grantee in the preceding sentences of this paragraph B, this Easement does not grant to Grantee, nor to the public, any rights to enter upon the Property.

C. Injunction and restoration. To enjoin any activity on, or use of, the Property which is inconsistent with the purposes and terms of this Easement and to enforce the reasonable restoration of such areas or features of the Property as may be damaged by such activity or use.

SECTION III

Reserved Rights and Prohibited Uses

A. Reserved rights. Grantor reserves to themselves and to their personal representatives, heirs, successors, and assigns, all rights accruing from their ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not expressly prohibited herein, that do not destroy or impair the Conservation Values, and that are not inconsistent with the terms and purposes of this Easement. Without limiting the generality of the foregoing sentence, those uses and practices described in Exhibit B, attached hereto and incorporated by this reference, are expressly permitted.

B. Prohibited uses. Any activity on, or use of, the Property that is inconsistent with the terms and purposes of this Easement is prohibited. Without limiting the generality of the foregoing sentence, the activities and uses described in Exhibit C, attached hereto and incorporated by this reference, are expressly prohibited.

SECTION IV
Prior Notice by Grantor and Approval of Grantee

Any enterprise, use, or activity proposed to be done or undertaken by Grantor requiring Grantee's approval, consultation, notification, or mutual agreement (including any provision of Exhibit B or Exhibit C expressly requiring the prior approval of Grantee) may be commenced only after satisfaction of the notice and approval conditions of this Section IV.

A. Grantor's written request for approval. Prior to the commencement of any enterprise, use, or activity requiring Grantee's approval, Grantor must send Grantee written notice of Grantor's intention to commence or undertake such enterprise, use, or activity. Said notice must inform Grantee of all aspects of such proposed enterprise, use, or activity, including, but not limited to, the nature, siting, size, capacity, and number of structures, improvements, facilities, or uses, and the dates and duration of the activity or uses, as appropriate. The request must provide Grantee with an address to which Grantee's response should be sent, and the names and addresses of persons to contact about the request.

B. Grantee's address. Any request for approval of a proposed enterprise, activity, or use shall be either:

(i) delivered in person with a signed and dated proof of delivery, or

(ii) sent by registered or certified mail, return receipt requested, or

(iii) sent by Federal Express or other reputable carrier or delivery service, provided that the sender obtains a signed proof of delivery.

Grantor's requests for approval shall be delivered to Grantee at 324 Fuller Avenue, Helena, MT 59601, or if sent by United States Mail, shall be addressed to Grantee at P.O. Box 355, Helena, MT 59624, or to such other address as Grantor from time to time may be informed of in writing by Grantee.

C. Time for Grantee's response. Grantee shall have thirty (30) days from Grantee's receipt of a request for approval, as indicated by the date of delivery receipt, to review the proposed enterprise, use, or activity and to notify Grantor of any objection thereto. Nevertheless, the thirty (30) day period shall not begin until such time as Grantee has received adequate information from Grantor to evaluate the proposed activity. If Grantee requires additional information to evaluate the proposed activity, Grantee shall request the information from Grantor as soon as practicable and in any case not later than twenty (20) days after receiving the request for permission.

D. Grantee's response to requests for approval. Except as provided in paragraph E of this Section IV, only upon Grantee's express written approval may the proposed enterprise, use, or activity be commenced and/or conducted, and only in the manner explicitly represented by Grantor and approved by Grantee. Grantee's decision to approve or disapprove the activity proposed by Grantor shall be sent by registered or certified mail, return receipt requested, or by other delivery or courier service with proof of delivery, to Grantor at the address provided to Grantee in Grantor's request. A decision by Grantee to disapprove a proposed activity shall be based upon Grantee's reasonable determination that the proposed enterprise, use, or activity is inconsistent with the purposes or terms of this Easement. If, in Grantee's judgment, conformity with the purposes or terms of this Easement is possible, Grantee's response shall inform Grantor of the manner in which the proposed enterprise, use, or activity can be modified to be consistent with this Easement.

E. Grantee's failure to respond. If Grantee fails to respond to Grantor's request for approval within the response time set forth in paragraph C above, the proposed enterprise, use, or activity shall be deemed consistent with the purposes of this Easement, Grantee having no further right to object to the enterprise, use, or activity identified by such notice. Grantee's failure to respond to any individual request for approval shall not be deemed to be a waiver of any other duty and obligation of Grantor to seek prior approval for other specific activities for which Grantee's approval is necessary.

F. Acts beyond Grantor's control. Grantor shall be under no liability or obligation for any failure in the giving of notice with regard to any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property or to any person resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any other cause beyond the control of Grantor similar to those occurrences specified.

G. Rejection or refusal. Rejection or other refusal to accept notices, or objections, or approvals by any party hereto shall be deemed receipt thereof.

SECTION V

Breach and Restoration

A. Grantee's remedies. If Grantee determines that Grantor, or third parties under Grantor's authority and control or acting with Grantor's knowledge or approval, are in violation of the terms of this Easement, Grantee shall give written notice to Grantor of such violation. In said notice of violation, Grantee shall demand corrective action by Grantor sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purposes and terms of this Easement, to restore the portion of the Property so injured to the condition that existed prior to the injury. If Grantor:

(i) fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee; or

(ii) under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing the violation within thirty (30) days (or within thirty (30) days of Grantor's receipt of notice from Grantee, fails to agree with Grantee in writing on a date by which efforts to cure such violation will reasonably begin); or

(iii) fails to continue diligently to cure such violation until finally cured,

Grantee may bring an action in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation by a temporary or permanent injunction, to require the restoration of the Property to the condition that existed prior to any such injury, and to recover any damages to which it may be entitled for violation of the terms of this Easement.

If Grantee, in its sole discretion, determines that a violation is threatened or imminent or that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values, Grantee may pursue its remedies under this paragraph without giving notice of violation required above and without waiting for the period provided for a cure to expire.

Grantee's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Easement, and Grantor agrees that Grantee shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the

terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. If injunctive relief is inadequate to restore the Conservation Values as a result of a violation and to compensate Grantee and the public for the loss and damage to Grantee's rights, Grantee shall be entitled to recover damages for violation of the terms of this Easement or injury to any Conservation Value protected by this Easement including, without limitation, damages for the loss of open-space, scenic, aesthetic, or natural resource values. Without limiting Grantor's liability therefor, Grantee, in its sole discretion may apply any damages recovered to the cost of undertaking any corrective action on the Property. Grantee's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

B. Costs of enforcement. Any costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including reasonable costs of suit and attorneys' fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Easement shall be borne by Grantor. "

C. Grantee's discretion. Enforcement of the terms of this Easement shall be at the discretion of Grantee, and any forbearance by Grantee in the exercise of its rights under this Easement in the event of any breach of any provision of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such provision or of any subsequent breach of the same or any other provision of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

D. Waiver of certain defenses. Grantor hereby expressly waives any defense of laches, estoppel, or prescription.

E. Acts beyond Grantor's control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

F. Mediation. If a dispute arises between the parties concerning the consistency of any use or activity with the terms or purposes of this Easement, and if Grantor agrees not to proceed with the use or activity pending resolution of the dispute, either party may request in writing to the other that the matter be mediated. Within fifteen (15) days of the receipt of such a request, the two parties may jointly appoint a single independent third-party mediator to hear the matter. Each party shall pay an equal share of the mediator's fee. In referring any matter arising under this Easement to mediation, Grantor and Grantee agree that mediation offers an alternative to the expense and time required to resolve disputes by litigation and is therefore often preferable to litigation. Nevertheless, mediation pursuant to this Section V, paragraph F, shall be voluntary, and this mediation provision shall not be interpreted as precluding or limiting the parties from seeking legal or equitable remedies available under this Section V.

SECTION VI

Costs and Taxes

Grantor shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including responsibility for the control of noxious weeds in accordance with Montana law. Grantor shall pay any and all taxes, assessments, fees, and charges levied by competent authority on the Property, except any tax or assessment on this Easement. Any

lawful tax or assessment on this Easement shall be paid by Grantee. Grantor shall also be responsible for and shall bear all costs associated with ensuring compliance with all federal, state, and local laws, regulations, rules, and ordinances.

SECTION VII

Indemnities

A. Control of risks associated with Property ownership. Grantor and Grantee acknowledge and agree that Grantor retains primary ownership of the Property and therefore Grantor controls day-to-day activities on, and access to, the Property, except for Grantee's limited rights to monitor the condition of the Conservation Values and to enforce the terms of this Easement.

Except as specifically provided in paragraph C of this Section VII, Grantor therefore agrees that general liability for risks, damages, injuries, claims, or costs arising by virtue of Grantor's continued ownership, use, and control of the Property shall remain with Grantor as a normal and customary incident of the right of Property ownership.

B. Grantor's obligation to indemnify. Grantor agrees to hold harmless and indemnify Grantee from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, Grantee's reasonable attorneys' fees and costs of defense, arising from or in any way connected with:

(i) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, except as set forth in paragraph C below;

(ii) the obligations specified in Section VI; and

(iii) the obligations arising from past, present, or future presence of any hazardous substance on the Property, and any obligation associated with the generation, discharge, transport, containment, or cleanup of any such hazardous substance.

C. Grantee's obligation to indemnify. Grantee shall hold harmless and indemnify Grantor from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including reasonable attorneys' fees and costs of defense, arising from or in any way connected with injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, while Grantee is on the Property in the course of carrying out the duties and obligations of Grantee under the terms of this Easement.

D. Definitions. For the purposes of this Section VII, Grantor's and Grantee's agreement to hold harmless and indemnify will extend to their respective directors, members, partners, officers, employees, and agents and their heirs, personal representatives, successors, and assigns. The term "hazardous substance" shall mean any chemical, compound, material, mixture, or substance that is now or hereafter defined or classified as hazardous or toxic by federal, state, or local law, regulation, or ordinance. Nothing in this Easement shall be construed as giving rise to any right or ability in Grantee to exercise physical or managerial control over activities on the Property or to become an "owner" or "operator" of the Property within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. '9601 et seq. ("CERCLA"), or the Montana Hazardous Waste Act, Sections 75-10-401, et seq., and 75-10-601 et seq., MCA, and its successor statutes, and similar state and federal statutes.

SECTION VIII
Assignment of Easement

Grantee may transfer or assign this Easement, provided that any such assignment or transfer must be made to a “qualified organization,” within the meaning of Section 170(h)(3) of the Code, and a “qualified private organization,” within the meaning of Sections 76-6-10495) and 76-6-204, MCA, and,, furthermore, the assignee must be organized or operated primarily or substantially for one or more of the conservation purposes specified in Section 170(h)(4)(A) of said Code. Any such qualified organization must agree in the assignment instrument to enforce in perpetuity the conservation purposes of this Easement. In the event assignment of this Easement becomes necessary, Grantee shall seek an assignee which is mutually acceptable to Grantee and Grantor. Grantee agrees that it will make a reasonable effort in the event of any assignment to suggest an assignee which is a qualified organization other than a governmental unit referred to in Section 170(c)(1) of the Code, which has conservation of scenic resources and open space as a substantial organizational purpose, and Grantee further represents to Grantor that its present intention is to assign its interest in this Easement only in connection with a dissolution of Grantee.

SECTION IX
Documentation

Grantor has made available to Grantee, prior to the execution of this Easement, information sufficient to document the condition of the Property, including the condition of its Conservation Values of the Property at the time of the grant of this Easement. This information is based in part upon a site visit to the Property by Grantee or Grantee’s agents on _____, 20 ____, and consists of mapping of physical features and resources, photographs of structures, developments, and improvements, and gathering of other appropriate information to document the Conservation Values of the Property as of the date of this Easement. The parties have signed a written acknowledgment, attached hereto as Exhibit D and incorporated by this reference, that the information gathered accurately represents the condition of the Property as of the date of the grant of this Easement. This information shall be compiled and developed into a final Resource Documentation Report, supplemented with aerial photographs, historical, archival, and government documents, as appropriate and available, as soon as is practically feasible after the grant of this Easement. The Resource Documentation Report shall be maintained on file with Grantee. The parties intend that the Resource Documentation Report shall be used by Grantee to monitor Grantor’s future uses of the Property and practices thereon. The parties agree that, in the event a controversy arises with respect to the condition of the Conservation Values, the parties shall not be foreclosed from utilizing any other relevant document, survey, or report to assist in the resolution of the controversy. The parties further agree that if the Resource Documentation Report contains any summaries of, or representations about, the terms or conditions of this Easement, including Exhibit E hereof, any conflict or inconsistency between the terms and conditions of this Easement and the Resource Documentation Report shall be governed by the express terms and conditions herein and not in the Resource Documentation Report.

SECTION X
Extinguishment: Grantee’s Entitlement to Proceeds

A. Extinguishment. If circumstances arise in the future which render the purposes of this Easement impossible or impractical to accomplish, this Easement may be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction, and the amount of the compensation to which Grantee shall be entitled from any sale, exchange, or involuntary conversion of all or any portion of the Property, subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by Montana law at the time, in accordance with paragraph B of this Section. In accordance with Section 76-6-107(2),

MCA, Grantee shall use any such proceeds received from easement termination in a manner consistent with the conservation purposes of this Easement.

B. Compensation. This Easement constitutes a real property interest immediately vested in Grantee. If this Easement is terminated or extinguished pursuant to paragraph A or C of this Section X, Grantor agrees that Grantee shall be compensated for the fair market value of its property right. In such event, Grantee, on the subsequent sale, exchange or condemnation of the Property after termination or extinguishment of the Easement, shall be entitled to a portion of the proceeds equal to the fair market value of the Easement, or any part thereof which is terminated, extinguished or condemned, as of the date of subsequent sale, exchange or condemnation of the Property. Grantor and Grantee agree that they shall endeavor in good faith to reach mutual agreement on the proceeds to which Grantee shall be entitled if the Easement is terminated or extinguished without the need for appraisal. If mutual agreement cannot be reached by the parties, an appraisal of the value of the Easement that has been terminated or extinguished shall be conducted by a licensed, certified real-estate appraiser, who is acceptable to both parties. The appraiser shall apply all applicable appraisal standards for conservation easements which are contained in the Internal Revenue Code, and Treasury Regulations promulgated thereunder, at the time of the Easement termination, extinguishment or condemnation, or by any other method agreed to by Grantor and Grantee. Grantor and Grantee shall share equally the cost of any appraisal pursuant to this paragraph.

C. Eminent domain. If all or a portion of the Property is taken for a public purpose in the exercise of eminent domain so as to abrogate the restrictions imposed by this Easement, Grantor and Grantee may join in appropriate actions to recover the value of each party's interest in the Property (or portion thereof) taken, as established in paragraph B of this Section X, including the value of Grantee's Easement as it pertains to the condemned property at the time of the taking or condemnation. Grantor and Grantee shall be entitled to any incidental or direct damages resulting from such taking or condemnation, in proportion to their interest in the rights which are taken or condemned and for which such damages are awarded. Proceeds shall be divided between Grantor and Grantee in proportion to their interest in the Property, or portion thereof, as established by paragraph B of this Section X, and Grantee shall use any such proceeds received from easement condemnation in a manner consistent with the conservation purposes of this Easement.

SECTION XI

Grantor's Representations and Warranties

Grantor represents and warrants that, after reasonable investigation and to the best of their knowledge, as of the date of the conveyance of this Easement:

1. Grantor has clear title to the Property; Grantor has the right to convey this Easement to Grantee; and the Property is free and clear of any encumbrances, except those encumbrances that have been expressly approved by Grantee.
2. Any handling, transportation, storage, treatment, or use of any substance defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, that has occurred on the Property prior to the date of this Easement has been in compliance with all applicable federal, state, and local laws, regulations, and requirements. No deposit, disposal, or other release of any hazardous substance has occurred on or from the Property, in violation of applicable law.
3. No underground storage tanks are located on the Property, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been

removed from the Property in a manner not in compliance with the applicable federal, state, and local laws, regulations, and requirements.

4. Grantor and the Property are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Property and its use.

5. There is no pending or threatened litigation in any way affecting, involving, or relating to the Property, other than the ongoing statewide adjudication of water rights in Montana.

6. No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failing to comply with any federal, state, or local law, regulation, or requirement applicable to the Property or its use, nor do there exist any facts or circumstances that Grantor might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders.

SECTION XII

Subordination of Existing Mortgages

At the time of conveyance of this Easement, the Property is subject to the following mortgage and deeds of trust recorded in the public records of Cascade County, Montana:

- i) Deed of Trust for the benefit of Wells Fargo Bank, N.A., recorded June 10, 2013, as Document No. R0275465; and,
- ii) Stockman Bank of Montana, recorded December 29, 2016, as Document No. R333332
;

collectively referred to as “Lienholders.” The Lienholders have agreed by separate “Mortgage Subordination Agreements” which will be recorded contemporaneously with this Easement, that in the event of foreclosure of the Mortgage or Deed of Trust, under judicial or non-judicial proceedings, or in the event of other sale, transfer, exchange, or conveyance of title to the Property, the Property shall be foreclosed, sold, transferred, exchanged, or otherwise conveyed subject to Grantee’s rights to enforce the conservation purposes of this Deed of Conservation Easement in perpetuity and subject to Grantee’s rights to proceeds in the event of termination or extinguishment of this Easement, in whole or in part, in accordance with Section 76-6-107(2), MCA. All provisions contained in this Section XII shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

SECTION XIII

Miscellaneous Provisions

A. Partial invalidity. If any provision of this Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Easement and the application of such provisions to persons or circumstances other than those as to which it is found to be invalid shall not be affected thereby.

B. “Grantor” and “Grantee.” The terms “Grantor” and “Grantee,” as used herein, and any pronouns used in place thereof, shall mean and include the above-named Grantor and their heirs, personal representatives, executors, successors in interest, and assigns, and The Montana Land Reliance and its successors and assigns, respectively.

C. Titles. Section and paragraph titles and subtitles are for convenience only and shall not be deemed to have legal effect.

D. Subsequent transfers. Grantor agrees that reference to this Easement and reference to its dates and places of recording in the public records of Cascade County will be made in any subsequent deed or other legal instrument by which they convey any interest in the Property, including any leasehold interest. Grantor agrees to incorporate the terms and conditions of this Easement by express recording reference to the Easement in any deed by which Grantor conveys title to the Property.

E. Subordination. No provision of this Easement is to be construed as impairing the ability of Grantor to use the Property as collateral for any loan, provided that any mortgage or lien arising after the date of execution of this Easement shall be subordinate to the terms of this Easement.

F. Notice of suit. Grantor must immediately provide Grantee with notice of any lawsuit or administrative action involving the Property or which threatens the integrity of this Easement. Notice must be sent to Grantee's address in Section IV, paragraph B, and must include a copy of any lawsuit or administrative action filed. Grantor agrees not to object to Grantee's intervention in any such lawsuit or action. Such lawsuit or action can include, but is not limited to, quiet title action, partition, condemnation or eminent domain, foreclosure, environmental clean-up or enforcement, or any other lawsuit or action affecting the Property and/or potentially affecting the Conservation Values protected by this Conservation Easement.

G. Governing law. In the event any dispute arises over the interpretation or enforcement of the terms and conditions of this Easement, the laws of the State of Montana shall govern resolution of such dispute, without regard to conflict of laws.

H. Amendment. If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee may jointly amend this Easement; provided that no amendment shall be allowed that will affect the qualifications of this Easement under any applicable laws, including MCA Section 76-6-101, et seq., and the Code. Any amendment must be consistent with the conservation purpose of this Easement, must not affect its perpetual duration, and either must enhance, or must have no effect on, the Conservation Values which are protected by this Easement. Furthermore, any amendment must not result in prohibited inurement or private benefit to Grantor or any other parties. Any Easement amendment must be in writing, signed by both parties, and recorded in the public records of Cascade County.

I. Conservation intent. Any ambiguities in this Easement shall be construed in a manner which best effectuates protection and preservation of the Conservation Values and the policy and purposes of MCA Section 76-6-101, et seq. The parties acknowledge that each party and its counsel have reviewed and revised this Easement and that no rule of construction that ambiguities are to be resolved against drafting party shall be employed in the interpretation of this Easement.

J. Entire agreement and merger of previous understanding. This Easement, including all Exhibits attached hereto, constitutes the entire understanding between the parties hereto with to respect Grantor's grant of this Easement on and over the Property described in Exhibit A, and all prior or contemporaneous negotiations, communications, conversations, understanding, and agreements had between the parties hereto, oral or written, are merged in this Easement.

K. Disclaimer. Grantee does not warrant, guarantee, or otherwise offer any assurance as to the deductibility, if any, of the contribution of this Easement, or its qualification under any applicable state or federal laws. Grantor has been advised by Grantee to secure qualified independent legal and tax advice, and Grantor has had ample opportunity to do so.

**EXHIBIT A
LEGAL DESCRIPTION**

Township 20 North, Range 02 West, P.M.M., Cascade County, Montana

Section 17: NW $\frac{1}{4}$ NW $\frac{1}{4}$; SW $\frac{1}{4}$ NW $\frac{1}{4}$

Deed Reference: Document No. R0079578

Section 18: NE $\frac{1}{4}$ NE $\frac{1}{4}$

Deed Reference: Reel 302, Document 1127

Less and except those portions conveyed or purportedly conveyed as public roadways.

ALL OF THE FOREGOING DESCRIBED PROPERTY IS CONVEYED SUBJECT TO all third party rights of record in the Property existing at the time of conveyance of this Easement and not subordinated to this Easement.

EXHIBIT B PERMITTED USES AND PRACTICES

The following uses and practices, though not an exhaustive recital of consistent uses and practices, are hereby deemed to be consistent with the purposes of this Easement and are expressly permitted:

1. Agricultural activities. To conduct farming, ranching, and other agricultural activities, including raising and managing livestock and planting, raising, and harvesting agricultural crops.
2. Recreational use. To use the Property for non-commercial recreational activities, including, but not limited to, fishing, hiking, wildlife viewing, and quiet enjoyment by Grantor and invitees, provided that all such recreational activities on the Property must remain consistent with protection and preservation of the Conservation Values.
3. Water resources. To maintain, enhance, and develop water resources on the Property for permitted agricultural uses, fish and wildlife uses, domestic needs, and private recreation. Permitted uses include, but are not limited to, the following: the right to restore, enhance and develop water resources, including ponds; to locate, construct, repair, and maintain irrigation systems; and to develop stock watering facilities.
4. Structures and Building Envelopes. To construct, maintain, repair, remodel and make limited additions to, and in the event of their removal or destruction, to replace the following structures on the Property:
 - a. Residential dwelling units. For the purpose of this Easement, the term “residential dwelling unit” means a structure, or a portion thereof, with sleeping accommodations and kitchen facilities that is provided, used, constructed, converted, remodeled, added onto, or replaced for habitation or occupation by one or more people. The definition of such “residential dwelling units” includes, but is not limited to, residences, apartments or suites that are a part of associated outbuildings and agricultural structures as set forth in subparagraph 4b below, guest houses, employee houses, cabins, mobile homes, trailers, and other moveable living units if they contain kitchens and sleeping accommodations. No more than two (2) residential dwelling units, including the one (1) existing residential dwelling unit and one (1) additional residential dwelling unit are permitted on the Property. All residential dwelling units, and replacements thereof, if any, must be located within designated Building Envelopes as defined in subparagraph 4c below. No other permanent habitations, living or sleeping quarters are permitted on the Property.
 - b. Non-residential outbuildings. Non-residential outbuildings, including, but not limited to, barns, shelters, corrals, other agricultural facilities, garages, workshops, sheds, and recreational structures (hereinafter “non-residential outbuildings”). All non-residential outbuildings must be located within the designated Building Envelopes as defined in subparagraph 4c. For the purposes of this Easement, the term “agricultural facilities” and “recreational structures” do not include indoor riding arenas, which are expressly prohibited on the Property.
 - c. Building Envelopes. The one (1) existing residential dwelling unit and all of its associated non-residential outbuildings are located within the “Existing Building Envelope” delineated in Exhibit E, attached hereto and incorporated by reference. The Existing Building Envelope consists of approximately three (3) acres. The one (1) permitted additional residential dwelling unit and all its associated non-residential outbuildings must be located either within the Existing Building Envelope or within a newly defined “Building Envelope #2” that is proposed by Grantor and approved in writing by Grantee, pursuant to Section IV of this Easement. Building

Envelope #2, if proposed by Grantor, may not exceed two (2) acres in size, and must be sited in a location that is consistent with protection of the Conservation Values, including protection of the scenic resources of the Property.

The purposes of the Building Envelopes are to allow Grantor flexibility in use of the residential dwelling units and non-residential outbuildings, to cluster residential uses and other structures on the Property, and to protect the Conservation Values. If necessary, wells and drain fields may be located outside of the Building Envelopes. To ensure that Building Envelope #2 is does not exceed two (2) acres and protects the Conservation Values, Grantor shall be responsible for defining the specific boundaries of Building Envelope #2 by legal survey or other mutually agreeable method of delineation on the ground. The proposed boundaries of Building Envelope #2 shall be subject to prior approval of Grantee, as provided in Section IV hereof, which approval shall not be unreasonably withheld. Such approval must be obtained prior to beginning construction of any new residential dwelling unit or non-residential outbuildings. After Grantee approves of the location and size of Building Envelope #2, Grantor and Grantee agree that Grantee may file in the public records of Cascade County notices of the location and description of the Building Envelope, as applicable, at no cost to Grantor.

5. Transfer of land. To grant, sell, exchange, devise, gift, dispose of, or otherwise convey or transfer (collectively "transfer") all or any portion of Grantor's right, title, estate, and interest in the Property in unified title and as no more than two (2) parcels, subject to the terms, conditions rights, restrictions, and obligations contained in this Easement. If the Property is divided into two (2) parcels pursuant to this paragraph 5, the Existing Building Envelope described in paragraph 4c of this Exhibit B and delineated in Exhibit E may not be divided between separate parcels and must be wholly incorporated into one of the parcels.

In the event of sale, exchange, devise, or gift of one of the parcels permitted above, Grantor shall expressly allocate between the two parcels created in the conveyance documents the right: 1) to designate Building Envelope #2 and to construct the one (1) additional residential dwelling unit permitted in this Exhibit B, paragraph 4; and 2) the right to operate a bed and breakfast business, as permitted in this Exhibit B, paragraph 11., **If no allocation is made, the additional residential dwelling unit may only be constructed within the Existing Building Envelope, and the operation of a bed and breakfast business will not be permitted on the Property.**

Whether conveyed as a single tract or whether conveyed as separate parcels pursuant to this paragraph 5, the Property shall be conveyed expressly subject to all terms, conditions, rights, restrictions, and obligations contained in this Easement. Furthermore, if Grantor elects to divide the Property as herein provided, Grantor must comply with all federal, state and local laws, ordinances and regulations concerning subdivision, as applicable, including the surveying of the parcel to be sold and the submission of the proposed creation of a separate tract to state and local review.

Grantor shall furnish Grantee with a copy of any document or conveyance utilized to effect the transfer of the Property within thirty (30) days of the execution of said document or conveyance.

6. Timber removal. To remove select trees that present a hazard to persons or property, and to cut firewood, posts, and poles for non-commercial use. Except as provided in the following paragraph, all timber removed by Grantor pursuant to this paragraph 6, must be used or disposed of on the Property. All such timber removal activities must be conducted in a manner that protects and minimizes impact on the Conservation Values. In connection with the upkeep, maintenance, and repair of permitted structures, Grantor specifically reserves the right to clear brush, and prune, trim, and remove trees, and to plant trees, shrubs, flowers, and other native or non-native species for landscaping or gardening purposes, all within the Building Envelopes described in paragraph 4 of this Exhibit B, without obtaining any approval from Grantee.

7. Fences. To construct, maintain, and repair fences, including livestock corrals, loading chutes, holding pens, and other enclosed fencing for temporary livestock management and transport, on the Property.

8. Roads. To repair, maintain, and improve existing roads on the Property. Grantor also reserves the right to construct, repair, improve, and maintain new roads: (a) in connection with farming, ranching, and other agricultural uses; (b) access to the residential dwelling units and other structures permitted in Exhibit B; and (c) in relation to the granting of rights-of-way easements as permitted in the following paragraph. Any new road that is constructed pursuant to this paragraph 8, must be sited and maintained consistently with the preservation and protection of the Conservation Values.

Grantor may grant right-of-way easements: 1) to appropriate governmental entities for the improvement and/or expansion of public roads bordering and/or traversing the Property, provided the governmental entity seeking the right of way easement documents the public necessity of such roadway easements in accordance with the provisions of Section X of this Easement and of Title 70, Chapter 30 of the Montana Code Annotated, and other applicable laws pertaining to condemnation of real property interests for public uses; 2) to access parcels transferred under Exhibit B, paragraph 5; and 3) to neighbors over existing or permitted roads on the Property.

9. Utilities. Grantor retains the right to install utility structures, lines, conduits, cables, wires, or pipelines (hereafter “utilities” and “utility services”) upon, over, under, within, or beneath the Property to existing and subsequently constructed structures and improvements that are expressly permitted on the Property by this Easement. Grantor retains the right to construct wind, solar, hydroelectric, geothermal, and other types of renewable energy generation facilities (hereafter “renewable energy production”) solely for uses on the Property as such uses are permitted by this Easement, except that any incidental surplus energy may be sold commercially for use off of the Property or credited to Grantor’s utility service (net metering). Grantor also retains the right to grant right-of-way easements for utility services to neighboring properties, provided that any such new right-of-way easements do not significantly impair the Conservation Values protected by this Easement, pursuant to Treasury Regulation 1.170A-14(e)(2).

With the prior approval of Grantee pursuant to Section IV of this Easement, Grantor may also permit the expansion of existing utility distribution services running through the Property, including the construction of new electrical utility distribution lines (but not electrical transmission lines which are prohibited by Exhibit C, paragraph 9), and may grant associated right-of-way easements, if Grantor’s exercise of these reserved rights does not significantly impair the Conservation Values protected by this Easement, pursuant to Treasury Regulation 1.170A-14(e)(2). Grantee’s prior approval of new or upgraded utility distribution services and right-of-way easements will require submission by Grantor of a construction/installation plan. Grantor shall contact Grantee prior to the preparation of the construction/installation plan to obtain the required information to be included in any such plan. Grantor and Grantee will mutually determine the completeness of the utility construction/installation plan and its adherence to the general and specific intentions of this Easement prior to the approval of such plan. Any construction/installation, if approved by Grantee as provided in Section IV hereof, shall be conducted in accordance with said plan. Any new and expanded utility services and associated right-of-way easements must be memorialized in a written agreement that is recorded in the public records of Cascade County, signed by Grantor, Grantee, and the utility service provider prior to beginning construction.

10. Bed and breakfast business and/or residence-based businesses. To use one (1) of the residential dwelling units on the Property, as described in this Exhibit B, paragraph 4, for the operation of a bed and breakfast business. If Grantor elects to transfer the Property in more than one parcel as permitted in this Exhibit B, paragraph 5, the bed and breakfast business shall only be

permitted and located on one (1) parcel of the Property, to be designated at the time of transfer as provided in this Exhibit B, paragraph 5.

Persons living on the Property may also conduct businesses within their residential dwelling units so long as any such businesses, other than the bed and breakfast business permitted above, are not sales or service businesses involving regular visits to the Property by the general public or by delivery trucks. The retail sale of goods produced and manufactured by such businesses may not take place on the Property.

----- END EXHIBIT B -----

EXHIBIT C

PROHIBITED USES AND PRACTICES

The following uses and practices, though not an exhaustive recital of inconsistent uses and practices, are hereby deemed to be inconsistent with the purposes of this Easement and are expressly prohibited:

1. Subdivision. Grantor and Grantee mutually intend that the entire Property described in Exhibit A shall be maintained and granted, sold, exchanged, devised, gifted, transferred, or otherwise conveyed in unified title as no more than two (2) parcels. Even if the Property consists of more than one parcel for real estate tax or any other purpose or if it may have been acquired previously as separate parcels, it will be considered one parcel for purposes of this Easement, and the restrictions and covenants of this Easement will apply to the Property as a whole. Except as provided in Exhibit B, paragraph 5, the following activities are expressly prohibited: the division, subdivision, or de facto subdivision of the Property. Prohibited property divisions under this Easement include, but are not limited to, any subdivision, short subdivision into remainder tracts, platting, testamentary division, partitions among tenants-in-common or joint tenants, judicial partitions, partitions in bankruptcy, allocation of title among partners, shareholders, trustees or trust beneficiaries, or members of any business entity, time-share or interval ownership arrangements, or other process by which the Property is divided into lots or in which title to different portions of the Property are held by different owners. Notwithstanding any provision herein that may be construed to the contrary, the Property may be leased for agricultural purposes, provided any such leases are subordinate to the terms and purposes of this Easement.

2. Alteration of the land surface and mineral removal. There shall be no alteration of the surface of the land, including, without limitation, the filling, excavating, dredging, mining, drilling, exploration for, removal or extraction of minerals, coal, hydrocarbons, including oil and gas, bentonite, soils, sand, gravel, rock, sod, peat, decorative rock, or other material on or below the surface of the Property, except any incidental alterations associated with a use or activity expressly allowed under Exhibit B. Extraction or removal of surface materials by surface mining methods is prohibited.

3. Commercial facilities. The establishment of any commercial or industrial facilities (other than those necessary in the operation or uses of the Property expressly permitted by this Easement) including, but not limited to, guest ranching, outfitting, commercial feed lot, retail sales businesses, service businesses (except as provided in Exhibit B, paragraph 10), restaurants, night clubs, campgrounds, trailer parks, motels, hotels, commercial recreation facilities, gas stations, retail outlets, or facilities for the manufacture or distribution of any product (other than products to be grown or produced on the Property in connection with purposes expressly permitted in Exhibit B hereto).

4. Dumping. The dumping or other disposal of non-compostable refuse on the Property, except nonhazardous wastes generated by activities permitted in Exhibit B, and provided such dumping does not harm the Conservation Values.

5. Construction. The construction or placement of any buildings or other structures, except for those specifically permitted in Exhibit B.

6. Campers, trailers, and recreational vehicles. The placing or use of campers, trailers, and recreational vehicles is prohibited, provided, however, that Grantor may store personal campers, trailers, and recreational vehicles within the Building Envelopes defined in Exhibit B, paragraph 4; and Grantor and Grantor's guests may park and use campers, trailers, or recreational vehicles on the Property on a temporary basis to accommodate normal visitation.

7. Billboards. The construction, maintenance, or erection of any billboards. Roadside signs are permitted only for the purposes of posting the name of the Property, advertising any business permitted on the Property, controlling public access, providing public notification of this Easement, or advertising the Property for sale.

8. Roads. The construction of roads and granting or reservation of right-of-way easements across or upon the Property, except as permitted in Exhibit B, paragraph 8. Subject to Section X, paragraph C, right-of-way easements may also be granted by mutual agreement of Grantor and Grantee in cases where eminent domain statutes apply and clear public necessity has been demonstrated to Grantor and Grantee, pursuant to the standards set forth in Title 70, Chapter 30 of the Montana Code Annotated, and other applicable laws pertaining to condemnation of real property interests for public uses.

9. Utilities. The granting of utility transmission lines and utility transmission corridor right-of-way easements, or the expansion of existing utility transmission lines and utility transmission corridor right-of-way easements. Subject to Section X, paragraph C, such right-of-way easements may only be granted by mutual agreement of Grantor and Grantee only in cases where eminent domain statutes apply and clear public necessity has been demonstrated to Grantor and Grantee, pursuant to the standards set forth in Title 70, Chapter 30 of the Montana Code Annotated, and other applicable laws pertaining to condemnation of real property interests for public uses.

10. Game, fur, or fish farms. The raising or confinement for commercial purposes of (i) "alternative livestock" and "game animals" as defined in MCA Section 87-4-406 or its successor statute, (ii) native or exotic fish, except that "private fish ponds," as defined by MCA Section 87-4-603, or its successor statute, may be maintained for recreational use, (iii) game birds, (iv) furbearers, including mink and fox, or (v) other "wild animals" as defined in MCA Section 87-4-801, or its successor statute, and "non-game wildlife" as defined in MCA Section 87-5-102(6), or its successor statute.

----- END EXHIBIT C -----

EXHIBIT D
ACKNOWLEDGMENT OF DOCUMENTATION SITE VISIT

KNOW ALL MEN BY THESE PRESENTS, that **RICHARD A. BOYLE AND JANET R. BOYLE** of Simms, Montana, as Grantor of the Easement to which this Exhibit D is attached and into which it is incorporated by reference, and **THE MONTANA LAND RELIANCE** of Helena, Montana, as Grantee of said Easement, hereby mutually acknowledge, declare, and agree as follows:

1. Grantor has made available to a representative of Grantee prior to the grant of this Easement, information sufficient to document the condition of the Conservation Values associated with the Property which shall be subject to this Easement.
2. A representative of Grantee has collected and compiled documentation sufficient to establish the condition of the Conservation Values of the Property as of the date of the grant of this Easement and has shared this documentation with Grantor.
3. The documentation was compiled by a representative of Grantee on a site visit to the Property on _____, and consists of mapping of physical features and resources, photographs of structures, developments and improvements, and gathering of other appropriate information to document the Conservation Values of the Property.
4. Grantor and Grantee mutually acknowledge and agree that this information constitutes an accurate representation of condition of the Property to be subject to this Easement at the time of its grant.
5. Additional information and documentation will be gathered as historical, government, and archival documents and aerial photographs are made available to Grantor and Grantee.
6. Grantor and Grantee further agree that a final Resource Documentation Report shall be completed from the above mentioned information as soon as practicable after the grant of this Easement to Grantee. Upon its completion, the final Resource Documentation Report shall be reviewed and approved in final form by both Grantor and Grantee, and shall be on file with Grantee in Grantee's normal place of business.

DATED this _____ day of _____, 20____.

GRANTOR:

RICHARD A. BOYLE

JANET R. BOYLE

GRANTEE:

THE MONTANA LAND RELIANCE,
a corporation

By: _____
[Name and title]

EXHIBIT E
EXISTING BUILDING ENVELOPE